IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 2620 OF 2006.

Smt. Shobha K. Mayawanshi & Ors. ..Petitioners.

V/s.

Union of India & Ors. ..Respondents.

Mr. Anurag Jain for the petitioners.

Mr. T.J. Pandian for respondent No.2.

Mrs. M.P. Thakur, AGP for respondent No.3.

Mr. R.G. Ketkar for respondent Nos. 4 and 5.

CORAM : B.H. MARLAPALLE &
J.H. BHATIA, JJ.

DATE : 19TH DECEMBER, 2006.

P.C.

. We have heard Mr. Jain the learned counsel for the petitioner and we have perused the affidavit in reply filed by the Section Officer, Urban Development Department, Government of Maharashtra, the Deputy Municipal Commissioner of Pune Municipal Corporation and the Executive Engineer, Pune Division of Central Railways in obedience of our order dated 27/11/2006, the

Principal Secretary to the Government of Maharashtra, Urban Development Department has filed his affidavit and the petitioners thereafter placed before us the rejoinder.

2. As per the petitioners, their dwellings are located on survey No. 15, Darawade Mala, Sangamwadi, T.P.Scheme, Plot No. 409, Koregaon Parjk, Pune - 411001 and vide Notification dated 22nd September,1994 published in Official Gazette of the State Government, the said area has been declared as a slum area under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment), Act, 1971 (for short the Slums Act). They further claimed that they have been having their structures on the subject plot prior to 1st January, 1995 and the respondent No.4 i.e. the Pune Municipal Corporation had issued them "Photo Passes" whereby the petitioners have been recognised as "protected occupiers" within the meaning of Section 3(z) of the Slums Act.

3. On the other hand, the Railways have issued

notice on 25/2/2006 for demolition of the dwelling structures of the petitioners. Consequently, the petitioners approached the Pune Municipal Corporation which in turn by its letter dated 13/3/2006 informed the Railways that the action of demolishing the dwelling structures of the petitioner should be taken only after making necessary provisions for the rehabilitation of the eligible slum dwellers. The Railways do not agree with this proposition, as they claimed that the dwellings which are on its land do not get or cannot get the protection under the Slums Act.

4. The Principal Secretary, Urban Development Department, Government of Maharashtra, in his affidavit has clarified that the petitioners are the occupants of the dwelling structures on the land situated on survey No. 15 Darwade Mala, Sangamwadi, T.P. Scheme and plot No. 409 is owned by one Shri Nivruti Narayan Darwade and his family. As per the said affidavit though, the petitioners claimed to be having their hutments on plot No. 409 at Sangamwadi, from the actual report it is seen that their hutments are in fact on plot No. 101 (p) and 102(p) and not on plot No. 409 as claimed by the petitioners. The affidavit further points out that

plot NO. 101(p) and 102(p) are the Railway property and they are not either private plots or the plots belonging to the State Government.

5. As per the Railways, the photo passes issued by the respondent Municipal Corporation were issued without consultation or calling for the say of the Railways and therefore, the issuance of such photo passes would not come in the way of the railways in getting the area cleared. It has been further pointed out that the Railways do not any such scheme for rehabilitation as at present for those hutments dwellers who are in the neighbourhood or adjacent to the railway tracks.

6. The right of the petitioners as being entitled for rehabilitation under the Slums Act has not been disputed either by the Municipal Corporation or by the State Government, and therefore, it is the responsibility of the State to move for the rehabilitation of the petitioners. Our attention has also been invited to the G.R. dated 10/7/2002 of the Government of Maharashtra regarding the rehabilitation of the hutment dwellers who ware identified as such prior to 1st January,1995. Clause 5 of the said G.R

clearly provides that the rehabilitation of the hutment dwellers on the land belonging to the Central Government or its undertaking will be undertaken by the State Government but at the instance of the Central Government and the excess expenditure (beyond the expenditure sanctioned under the State Government Scheme) will be reimbursed by the Central Government. The learned Counsel for the petitioners therefore, contends that in any case, the petitioners are entitled for rehabilitation and the Railways will have to take up the said issue with the State Government at the earliest possible.

6. We therefore, direct that respondent No.2 will take steps to approach the respondent Nos. 1 and 3 for the rehabilitation of the petitioners, so as to remove the encroachment on its property i.e. plot Nos. 101(p) and 102(p) of Koregaon Park area (Pune City). Respondent No.2 shall approach respondent No.3, within a period of four weeks, from today with all the details and the respondent No.3, in turn will finalise the rehabilitation scheme for the petitioners as per G.R. dated 10/7/2002, within a period of three months, from receipt of the said proposal, on any suitable plot under

the Pune Municipal Corporation area. The Railways i.e. respondent No.2 will not execute the impugned notice till the scheme is finalised by respondent No.3.

7. The petition is disposed off in terms of the above directions.

(J.H. BHATIA, J.) **(B.H. MARLAPALLE, J.)**